In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1089

BATES BLOCK, ET AL., PETITIONER

v.

COMPAGNIE NATIONALE AIR FRANCE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

1. This memorandum is submitted in response to the Court's order of March 25, 1968, inviting the Solicitor General to express the views of the United States.

The sole question in this case is whether the Warsaw Convention[1] applies to voyage charter flights.[2]

[1] Formally titled, "Convention for the Unification of Certain Rules Relating to International Transportation by Air," but commonly referred to by the name of the city in which it was concluded on October 12, 1929. It was adhered to by the United States in 1934, 49 Stat. 3000; T.S. No. 876.

[2] In a "voyage charter", as distinguished from a "bare-hull charter" or a "time charter", the owner of an aircraft—respondent in this case—charters the plane, with a full crew, for

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(App. 61a). Both the district court and the Court of Appeals for the Fifth Circuit held that it does apply to such flights and that, therefore, the carrier could invoke the limitation of liability provisions in the Convention. The court of appeals, after examining the terms of the Convention, its history, and the opinions of leading commentators, concluded:

> * * * The Warsaw Convention is based on the existence of a contract of carriage between the air carrier and the passenger. When a passenger is transported a contract of carriage exists whether or not the transportation is undertaken pursuant to an air charter. * * * Here Air France was the carrier. Air France assumed full contractual responsibility for the transportation of the passengers. In recognition of that responsibility Air France controlled the aircraft and operated it through an Air France crew. A passenger's right to be carried came into being only on the issuance and delivery of an individual ticket by Air France showing on its face the airline's obligation to perform the contract of transportation under the provisions of the Warsaw Convention. We hold therefore that the convention applied * * *. [App. 115a–116a].

2. The question has been examined by the Department of State, which of course has executive respon-

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a predefined route and destination, and retains operational control over the aircraft. See App. 67a–68a.

The power of the Civil Aeronautics Board to authorize supplemental air carriers to carry inclusive tour charters, which would be classified as voyage charters for these purposes, is before the Court in Nos. 800, 946, 969, *World Airways, Inc.* v. *Pan American World Airways, Inc.*

sibility for the interpretation of international agreements to which the United States is a party, by the Department of Transportation and by the General Counsel of the Civil Aeronautics Board. All are in agreement on the proposition that the courts below were clearly correct in their construction of the Convention. Moreover, in the government's view, the case does not present an issue of such recurring significance as to require plenary consideration by this Court.[3]

In light of the extensive analysis of the issues provided by Judge Wisdom's opinion for the court of appeals—a discussion which we regard as unexceptionable in all material respects—we do not undertake to duplicate in detail the reasons for the government's position. We believe that the fatal flight involved in this case was "international transportation" within the compass of Article 1(1) of the Convention (App. 2a), as defined in Article 1(2) (App. 2a). We find no support for the contention that air charters have been generally and categorically excluded from coverage by the Convention, either in the text of its provisions or in the deliberations leading to its promulgation. For the reasons stated by the court below (App. 91a, 105a–116a), we submit that the owner of

[3] There are no other reported decisions dealing with this precise problem. Moreover, on May 13, 1966, by Special Agreement among foreign and domestic air carriers, the limit of international air carrier liability for passenger injuries was increased to $75,000 per person on transportation to, from, or with an agreed stopping place in the United States. C.A.B. Agreement No. 18,900 (Order Serial No. E–23680, 31 Fed. Reg. 7302, 3 CCH Av. L. Rep. ¶ 27,130). Many air carriers also have similar guarantees in their filed tariffs.

an aircraft (typically, an airline, and in this case the respondent) is—in a voyage charter situation—the "carrier" within the meaning of Article 22(1) (App. 15a) and accordingly entitled to limit its liability for personal injuries arising out of the carriage of passengers in international transportation.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1968.

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